IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12235, 12336,12166
12205, 12214, 12325, 12136, 12328,
12320, 12315, 12314, 12405, 12408, 12313
12312, 12374, 12381, 12324, 12275, 12418, 12195 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOSHI BHAGVANBHAI KARSHANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12235 of 2003
MR KB PUJARA for Petitioner No. 1-3
..... for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 25/08/2003

ORAL(COMMON)JUDGEMENT

In all these petitions, the only point involved is whether the petitioners should be granted the benefit of decision of this court (Coram:K.A.Puj,J) in SCA No.9817/03 and allied matters or not?

2. Rule. Mr.A.D.Oza, Ld.Govt.Pleader waives service of rule on behalf of respondent-authorities. With the consent of learned advocates for parties matters are taken up for final disposal today.

3. Ld.counsel appearing for the petitioners have, interalia, submitted that the petitioners are similarly situated at par with the petitioners SCA No.9817/03 and others in as much as the petitioners had passed the examination prior in point of time and they have also submitted applications for getting admission in PTC. However, their marks are sought to be deducted in view of the Govt.Resolution, dated 3.7.03 copy whereof is produced at Annexure "A", which is not considered legal and valid as per the decision of this court (Coram:K.A.Puj,J) in case of Zaranben Rasikbhai Patel and others V/s State of Gujarat & Ors . It is submitted on behalf of the petitioners that not only their forms were accepted but the applications were accordingly processed without considering the GR, dated 3.7.03 in view of the interim order passed in the case of Zaranben Rasikbhai Patel(supra). However, the apprehension on the part of the petitioners is that as per para 52 of the decision this court in case of Zaranben (supra) the relief is granted qua the petitioners who were before this court and therefore the petitioners upon inquiry have learnt that since they were not petitioners in that group of petitions even though their applications are accepted and processed accordingly and even their case covered by the decision of this court in the case of Zaranben (supra), the said benefit will not be conferred upon the petitioners. Mr.Pujara and Mr.Yatin Oza, learned counsel for petitioners have submitted that the State Govt can not give discriminatory treatment to these persons who are similarly situated on all aspects. It has been submitted that this court has taken the view that the resolution for deduction of 15 marks can not be allowed to operate and it would operate from the next year and therefore the petitioners would be entitled to similar benefit. It has been submitted that the State should not take a technical stand of the matter so as to deprive the petitioners from getting the benefit. Mr.Oza and Mr.Pujara have relied upon the decision of the Apex Court in the matter of Prahlad Singh vs Union of India and

another reported in AIR 1989 SC 1563 and in the case of Doordarshan Cameramen's Welfare Association vs Union of India & Anr reported in AIR 1990 SC 1387 for contending that the similarly situated employees would be entitled to benefits if there is no delay and Mr.Pujara submitted that as such there is no delay because the judgment is pronounced 13.8.03 and petitioners have approached this court immediately.

4. On behalf of respondents the Ld.GP Mr.Oza submitted interalia that as per the decision of the Ld.single Judge in case of Zaranben (supra), the Ld.single judge has expressly conferred the benefits upon the persons who have approached this court and therefore it has been submitted that if the benefit is conferred upon the petitioners it may result into reviewing and/or modification of the judgment of another learned single judge in case of Zaranben (supra). Mr.Oza also submitted that some of the students who were not party to the case of Zaranben(supra) and group have already preferred Letters Patent Appeal before the Division Bench with the application for leave to prefer appeal, particularly, in view of the directions at para 52 of the said judgment. Therefore, Mr.Oza submitted that the petitioners who are before this court by present group of petitions can not be conferred any extra or additional benefits which is not intended to be done by the judgment in case of Zaranben(supra). However, Mr.Oza candidly admitted that the persons who applied for admission to PTC prior to 13.7.03 their applications are processed as per rules without deducting 15 marks in view of the interim orders passed by this court in the case of Zaranben(supra) and others. He submitted that there was further interim order not to finalise the PTC admission and as a result thereof the admission process is not finalised pending the decision of this court in case of Zaranben(supra). Mr.Oza also submitted that the petitioners should have approached this court at the relevant point of time and since they have not approached together with the petitioners of SCA No.981/03 and others no benefit should be conferred to these petitioners.

5. Before I proceed to consider the thrust of the matter, it is required to be taken note that the judgment of the single judge of this court is binding to another coordinate bench of this court and therefore accordingly the decision in the case of Zaranben (supra) is binding unless I take up the view recording reasons for dissenting. So far as the Govt.Resolution, dated 3.7.03,

which is impugned in all these petitions is concerned, a perusal of the judgment of this court in the case of Zaranben (supra) goes to show that this court has taken the view that the formalities or requirements of statutory provisions were not followed before passing the resolution and therefore the view was taken that it would be open to the State to apply the same after following the procedure as required under law. As such, since the issue is covered, I find that it is not necessary to record detailed reasons but it would not be out of place to mention that at para 49 of the said judgment in case of Zaranben(supra) the observations are as under:

"49. Having regard to the entire facts and circumstances of the cases, and after carefully examining the submissions made on behalf of the respective parties and having kept in mind the statutory provisions and judicial pronouncements on the subject, I am of the view that the respondent authorities are not justified in bringing out changes in admission pattern for PTC course, by reduction of 15 marks or by exclusion of students from vocational stream or by removal of reservation for students from Valmiki community or students of Ex-servicemen, handicapped students, widow or deserted women etc and all such Government resolutions, circulars, letters, advertisements to the above effect, more particularly, resolution dated 7.3.2003 and 3.7.03 and advertisement dated 30.6.2003 and 6.7.2003 making exclusion of the above categories and rules framed to this effect, without complying with statutory requirements are hereby quashed and set aside with a direction to follow the system for admission to PTC Course which was prevalent till academic year 2002-2003. This is, however, subject to one exception, i.e. maintenance of overall intake capacity. With regard to intake capacity of a class which may likely to be exceeded because of reservation of seats for students belonging to Valmiki community, students od Ex-servicemen, handicapped, widow or deserted women, the respondents are directed to reserve their quota of seats in such a manner, in that class or category to which they belong, so that intake capacity would not exceed. In other words, it would amount to reservation within reservation. For instance, if a student is belonging to Valmiki community, he will have his seat reserved

in Scheduled Caste quota and if a student is a son or daughter of Ex-serviceman and if she or he otherwise falls in general category, he or she will have his/her seat reserved from that category. Admission be given to them accordingly."

6. Therefore, as this court in the case of Zaranben(supra) has expressly quashed and set aside the Govt.Resolution and held that the reduction of 15 marks is illegal, I find that the petitioners, if they are similarly situated would be entitled to the similar benefit and it would not be not correct on the part of the State to deprive the benefit to the students who are 100% similarly situated. The court, in a given case, may not grant relief to those persons who are not before the court. In a given case the court may consider the question of extending benefit to those persons who are not even before the court, but merely because the court has not granted relief to those persons who are not before the court, it can not be said to be a sufficient ground for depriving the citizens who are similarly situated. Primafacie, the approach on the part of State authorities for depriving those similarly situated persons can not be said to be proper because the State should give equal treatment to all the citizens who are similarly situated.

Mr.Oza, Ld.GP made an attempt to submit that in view of para 52 of the judgment in case of Zaranben (supra) the State is justified in extending the benefit to only those persons who were petitioners therein before the court and when the State Govt itself had restricted the benefit confining those petitioners before the court at the relevant point of time in view of decision of the court at para 52, it can not be said that there is any error or the State Govt is not justified in taking such stand. It is true that as per para 52 of the said judgment, the benefits are conferred by the court upon the petitioners who were before the court at the relevant point of time, but, thereby, it can not be said that the State can not take independent view of the matter. Apart from that, even in the para 52 of its judgment what is observed by the court is as under:

"52. It is made clear that this judgment or order pronounced by this court today would not enlarge the scope of any new application being

considered or processed by the respondent authorities for the purpose of granting admission to PTC Course and relief granted here in these petitions would confine only to the present petitioners who are before the court."

7. If it is a case of enlargement of dispute between the parties who are having heard and being considered, the matter would have been different. In the present case, those persons who are petitioners herein have already applied and their applications are processed accordingly pursuant to the interim order in case of Zaranben (supra) as per unamended rules, can not be said to be any new applicant or the persons who did not apply at all. Had it been the case where the petitioners did not apply or applications of the petitioners were not accepted or rejected or applications not accordingly processed by deduction of 15 marks while preparing merit list, matter would have been different. As observed earlier, it is the submission of Mr.Oza that the applications were accepted and they are also processed without deduction of 15 marks. Therefore, in my view, if those persons who have applied prior to the last date of submission of applications are considered at par with the petitioners in the case of Zaranben(supra) as per the aforesaid decision no prejudice will be caused nor can it be said that it would result into enlarging the scope of dispute which is already decided by this court as per abovementioned decision in the case of Zaranben(supra). It is true that this court has granted relief as per observations made in para 52 to the petitioners who were before the court, but thereby, the present petitioners who are 100% similarly situated can not be deprived of their legitimate right on account of the view taken by this court in the case of Zaranben(supra).

8. Mr.Oza has fairly submitted that no Letters Patent Appeal against the decision of this court in the case of Zaranben(supra) is preferred nor the judgment of the learned single judge in case of Zaranben (supra) is stayed by the Division Bench of this court. However, he submitted that the State is considering the matter as to whether Letters Patent Appeal should be preferred or not.If the judgment of the learned single judge in case of Zaranben(supra) is stayed by the Division Bench of this court, then possibly the State would be justified in considering the matter accordingly by not conferring the benefits upon the present petitioners. However, as such, the State has yet to consider and at this stage matters are being decided. Therefore, the decision in Zaranben's case holds the field and I find that the State must act

upon the same accordingly and when the petitioners are similarly situated as that of the petitioners in the case of Zaranben (supra) so far as deduction of 15 marks is concerned, and there is no reason to deprive the petitioners of the said benefit.

9. In case ofPrahalad Siogh (supra), the Apex court had an occasion to consider the matter as to whether the benefit should be conferred on the similarly situated other Govt employees, relying upon the decision of the competent court and the Apex Court in the said case had found it proper to refer the matter to the larger bench. The Apex Court had once again occasion to consider the similar issue in the case of Doordarshan Cameramen's Association (supra) and after considering the earlier decision in the case of Prahalad Singh(supra)) the Apex Court has taken the view that it is not necessary for the larger bench to consider the issue as observed in case of Prahalad Singh's case (supra) and since there was no delay on the part of petitioners in approaching the court the relief was extended. In the present case, it has not come on record that any delay has changed the equity or has caused prejudice to other party.

10. It is also required to be taken note that all these matters pertain to the admission to PTC course and on account of earlier litigation in case of Zaranben(supra) and others, the process of admission to PTC course could not be finalised. It may be that the State may consider the matter for preferring Letters Patent Appeal against the decision in the case of Zaranben(supra) but if all these petitions are allowed to remain pending until the course which may be adopted by the State in future of preferring LPA or otherwise, the resultant effect would be that the petitioners will be placed into a situation which may not be compensated nor this court would not be in a position to put the clock back. Therefore, I find that by taking suitable care of such contingencies, matter can be considered accordingly even by the State authorities.

11. In view of the aforesaid observations and discussion, I am of the view that the following directions would meet with the ends of justice:

(A) All those petitioners who have applied prior to 13th July, 2003 and if their cases are similarly situated then 15 marks shall not be deducted while preparing the

merit list in view of the decision, dated 13.8.03. of this court in case of Zaranben(supra). However, the authorities shall not be required to comply with these directions in case the judgment of this court in case of Zaranben(supra) is stayed and/or modified and/or reversed by the higher forum known to law and in such circumstances it will be open for the State authorities to give effect accordingly.

(B) If any of the petitioners who have applied late in time, i.e. after 13th July, 2003 or if their applications otherwise are not to be considered eligible in view of other aspects would not be entitled to the benefit of direction No.(A) with a clarification that in the event of rejection of such applications by the authorities, it would be open to such petitioners to challenge the said action in accordance with law.

12. All these petitions are disposed of in terms of aforesaid directions. Rule in each petition is made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no costs.

DS permitted.

25.8.03 (JAYANT PATEL,J)